

NTSB Order No. EA-5372

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10<sup>th</sup> day of March, 2008

Respondent .

Docket SE-17990

Respondent appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued on August 7, 2007.<sup>1</sup> By that decision, the law judge upheld the Administrator's allegation that respondent violated 14 C.F.R. §§ 91.13(a), 91.139(c), and 99.7 of the Federal Aviation Regulations (FAR),<sup>2</sup> and affirmed the 60-day suspension of his

<sup>2</sup> Section 91.13(a) prohibits operation of an aircraft in a

private pilot certificate. We deny respondent's appeal.

The Administrator's March 2, 2007 order of suspension was filed as the complaint, and, as amended, alleges that, on or about April 27, 2006, respondent acted as pilot-in-command of a Piper PA-28-235, N9185W, on a visual flight rules (VFR) flight in the Washington D.C. ADIZ. The amended order alleged that respondent operated in violation of NOTAM FDC 6/2550 by failing to squawk a discrete transponder code while operating in the ADIZ, and by failing to establish two-way radio communications with ATC before entering and while operating within the ADIZ. The order alleged that these actions were careless or reckless in that they endangered the lives and property of others. The Administrator also alleged that respondent had a history of regulatory violation involving a prior illegal operation in this ADIZ in October 2004.

At the evidentiary hearing, the Administrator presented the testimony of FAA and Department of Homeland Security (U.S. Customs) personnel who were knowledgeable about the incursion into the ADIZ. They testified about the ADIZ, the radar tracking of respondent's aircraft, the identification of his aircraft, his

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(..continued)

careless or reckless manner so as to endanger the life or property of another. Section 91.139(c) prohibits, when a Notice to Airmen (NOTAM) has been issued under this section, operation of an aircraft within the airspace so designated, except in accordance with the authorizations, terms, and conditions prescribed in the regulation covered by the NOTAM. Section 99.7 requires each person operating an aircraft in an Air Defense Identification Zone (ADIZ) to comply with the special security instructions issued by the Administrator in the interest of national security, pursuant to agreement between the FAA and other Federal agencies.

unauthorized entry into the ADIZ, and the identification of respondent as the pilot. The Administrator introduced 11 exhibits, including NOTAM FDC 6/2550, a preliminary pilot deviation report, a letter of investigation, respondent's reply to that letter, and statements from personnel working at the Potomac Terminal Radar Approach Control (PCT) at the time of the incident. The Administrator presented evidence depicting the airspace, radar plots of the ADIZ incursion, a radar data-driven animation of the incursion, and a certified copy of respondent's airman records. Respondent testified, denying that his was the violative flight, but did not present other witnesses, and offered only one exhibit, a Washington, D.C. sectional aeronautical chart.

The Administrator called Brian Preston, a PCT air traffic controller on duty at the time of the flight. He testified that N9185W contacted him on that day to amend its time of departure. He gave the pilot an ADIZ clearance, which, Mr. Preston said, "is basically a squawk and a frequency." Mr. Preston identified his statement regarding the incident, stating that he "advised N9185W to squawk 4675 and contact departure on 126.75. N9185W read it back correctly."

Tom Arnold, a certified professional air traffic controller, was working the PCT ADIZ position that day. He identified his statement at the hearing, and testified that N9185W contacted him "as a departure from Gaithersburg Montgomery Airport." He instructed N9185W to remain clear of Class B and to report when

he was clear of the ADIZ.<sup>3</sup> When N9185W left the ADIZ, Mr. Arnold instructed him to squawk VFR, that is, a frequency of 1200.

Robert Conley, a contractor monitoring the ADIZ radar at PCT that day, identified Exhibit A-10 as his statement regarding this incident. He testified that U.S. Customs subsequently notified the coordinating agencies on the Domestic Events Network (DEN), through the National Capital Region Coordination Center, that a target was entering the ADIZ squawking a VFR 1200 code.<sup>4</sup> Mr. Conley went to "the Baltimore sensor, which had very good coverage in that area," and confirmed they were "not talking to that aircraft" and "then just observed it until it exited the ADIZ." He testified that he did not lose contact with N9185W on his radar scope at any time and that U.S. Customs audibly announced over the DEN that, "the aircraft had previously been on code 4675." Mr. Conley said that he "went into our radar data," which "indicated that that beacon code had belonged to N9185W, a PA-28 that had previously departed Gaithersburg."

Detection Systems Specialist Rick Gray, of U.S. Customs, whose duties include constant surveillance of aircraft entering and leaving the ADIZ, testified that his principal mission is the

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<sup>3</sup> Gaithersburg is in the ADIZ; respondent filed the appropriate ADIZ flight plan for departing Gaithersburg, and obtained and squawked the appropriate discrete transponder code (4675) after departing Gaithersburg and before he exited the ADIZ. The subsequent re-entry violated the FAR and became the subject of this enforcement action.

<sup>4</sup> This was respondent's aircraft, which, appropriately and as directed, ceased squawking 4675 and was appropriately squawking 1200 (VFR) while outside the ADIZ. When respondent re-entered the ADIZ, he was required to obtain a new discrete transponder code; he failed to do so.

detection, and then identification, of aircraft. As quickly as possible, he gives to coordinating agencies detailed information such as takeoff point of origin, altitude, speed, direction and heading, and latitude and longitude positions. Mr. Gray identified Exhibit A-11, a report produced by an extensive radar surveillance system using multiple radars for overlapping coverage of the entire country. It has real-time tracking capability, and allows access to ADIZ flight plans, with aircraft and pilot information, including tail number, type of aircraft, transponder codes, modes assigned and mode changes during flight. Mr. Gray said: "Anything the aircraft does, we'll have a record of it." He testified that if an aircraft of concern is detected in or entering the ADIZ, U.S. Customs reports, to the multiple other agencies on the DEN, "an intruder entering the ADIZ," with a bearing and range. U.S. Customs starts a record log, produces a reproduction of the radar screen, and watches to see if the aircraft threatens the zone containing the nation's high value assets, such as the White House and the Capitol.

Mr. Gray, located at his post in Virginia on the day in question, testified that he took a reproduction photo of his radar screen; began a track log; started taking minute-by-minute notes of altitudes and direction, changing modes or codes; and printed a track history from the point of origin. He later distributed all this information, described as "a complete replay of the actual events as they occurred," to the FAA, among other agencies. He said that the period of incursion into the ADIZ, confirmed by three overlapping radar coverages, was about 7 to 8

minutes. Exhibit A-11 contains the flight plan, including the discrete ADIZ squawk code; the aircraft's registration, including respondent's name and address; and a narrative of the incident prepared by Mr. Gray.

Mark Olsen, an air traffic controller by training, and acting director of the FAA Air Traffic Organization in Safety Services, Safety Investigations and Evaluations, testified that he supervises a team that, on request from an FAA organization, investigates accidents, pilot deviations, operational errors that involve air traffic control, and other such incidents across the national airspace system. He and a colleague developed a computer program in response to the difficulty in locating a prominent individual's aircraft when it crashed in 1999. Mr. Olsen testified that the program facilitates radar analysis and gives graphical depictions of what happened on the controller's radar display. The program, RAPTOR (Radar Audio Playback Terminal Operations Recording), was also used to locate debris from the 2003 Shuttle Columbia disaster.

Exhibit A-12 is a CD that "captured output from RAPTOR" and displays the flight path of the aircraft on the flight at issue as recorded by the radar surveillance system, following the aircraft from near Gaithersburg to its first exit from the ADIZ, its unauthorized re-entry into the ADIZ, and its second exit from the ADIZ. Information displayed includes location, speed, altitude, VFR transponder code, heading, and call sign. The program can show all aircraft operating at the time, but also can filter out all aircraft but one, so that the only aircraft being

displayed might be, for example, respondent's aircraft, as it was at the hearing. The CD contains three video files, one showing respondent's aircraft only, the second showing all aircraft flying at that time, and the third showing all aircraft squawking 1200.

Respondent testified that he flew alone on the flight, that his destination was Summit, Delaware (EVY), and that he did not know where McKeown Airport was. He said that he did not land there or at Okolona Plantation Airport, as the Administrator's evidence indicated, but at EVY. He said he used two VORs, a DME, a GPS, and a LORAN (electronic navigation devices), that they were operating in good condition, and that they indicated he was outside the ADIZ. He said that he was very familiar with the ADIZ and he did not think he re-entered the ADIZ as alleged.

The law judge affirmed all allegations and violations asserted in the Administrator's complaint and upheld the 60-day suspension of respondent's pilot certificate. Respondent raises three arguments on appeal, and the Administrator answers each.

In addition to his primary argument, regarding burden of proof, respondent presents two procedural arguments that we discuss first. He argues that the law judge erred by admitting evidence without adequate foundation and by admitting hearsay without the requisite indicia of trustworthiness. First, we note that the Federal Rules of Evidence are not applicable in our proceedings.<sup>5</sup> Also, as our Rules of Practice provide, hearsay is

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<sup>5</sup> See Administrator v. Guy America Airways, 4 NTSB 888, 891, n.14 (1983) ("only evidence the [APA] directs agencies to exclude is 'irrelevant, immaterial, or unduly repetitious evidence,'" citing

admissible.<sup>6</sup> As for multiple hearsay, the approach is similar.<sup>7</sup> In the instant case, all of the evidence had an extensive foundation established for its admission, and possessed substantial indicia of trustworthiness. We identify no issue with the admissibility or reliability of this evidence, and it appears that the law judge accorded the evidence appropriate weight in his decision. We discern no error by the law judge.

Respondent's next argument is that the law judge erred by allowing the testimony of witnesses who were "not fully noted in discovery until just before the trial." Respondent's Appeal Br. at 11. This was the subject of a motion for reconsideration by respondent. As soon as U.S. Customs confirmed the availability of Mr. Gray, on July 25, 2007, respondent was notified that both Mr. Preston and Mr. Gray would be witnesses; respondent received this notification on July 26, 2007. Late on the afternoon of Friday, August 3, counsel for respondent had a conversation with counsel for the Administrator, who indicated there was not enough time to depose the witnesses before the hearing on Tuesday,

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5 U.S.C. § 556(d)); Administrator v. Howell, 1 NTSB 943, 944 (1970).

<sup>6</sup> 49 C.F.R. § 821.38. See also Administrator v. Hayes, 1 NTSB 1747, 1748 (1972) ("in administrative proceedings, the crucial issue with respect to documentary evidence is not admissibility, but rather the weight to be attached thereto").

<sup>7</sup> See Administrator v. Repacholi, NTSB Order No. EA-3888 at 4 (1993) ("Where hearsay within hearsay carries ... sufficient indicia of trustworthiness and the interests of justice will best be served by admission ... we do not see why it should be ... inadmissible or insufficient to provide a substantive basis for a decision"). Repacholi expressly overruled previous decisions indicating that hearsay within hearsay was *per se* inadmissible.



August 7.

The law judge denied the motion for reconsideration, stating that the documents that these witnesses sponsored into evidence were given to respondent in February 2007 in initial discovery, as items of proof with the Enforcement Investigative Report. The law judge reasoned that respondent had the opportunity to cross-examine these witnesses, and that the testimony of the remaining witnesses was "more than sufficient to establish a preponderance of the evidence to sustain the charges." Respondent now argues that the remedy is to "preclude the testimony of the witnesses offered by surprise," and cites Administrator v. McClain, 1 NTSB 1542 (1972).

We do not believe that these witnesses can be reasonably described as a surprise. While their names may not have appeared on a list of witnesses, the report and the statement were given to respondent 6 months before the hearing. If they had been a surprise, respondent's remedy was to move for a continuance for additional time to review their potential testimony and to conduct additional discovery, if necessary.<sup>8</sup> Respondent does not argue, however, that their testimony contained any surprises.

In its proper context, McClain does no more for respondent than was done in this case. In early 2007, the Administrator gave respondent: (1) a copy of the statement of the air traffic controller who assigned a discrete transponder code and an ADIZ clearance; and (2) a copy of the report that documented the tracking of respondent's flight. Mr. Preston's statement

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<sup>8</sup> See Administrator v. Rivera, NTSB Order No. EA-4419 (1996).

included his signature and initials, and Mr. Gray's report indicated that "Rick Gray" entered the information. When the Administrator confirmed that Mr. Preston and Mr. Gray would be available as witnesses, the Administrator's counsel identified them as witnesses 2 weeks before the hearing.

Respondent was aware of the evidence represented by these witnesses well before the hearing and had adequate time to prepare his defense. Respondent has not explained why a deposition was needed. If respondent felt he did not have time to prepare, he should have asked for a continuance. He cannot now seek to exclude relevant evidence because he failed to adequately prepare his defense or seek a continuance.

As for respondent's primary contention, he argues that the Administrator did not prove that it was respondent, as opposed to another pilot in another aircraft, who penetrated the ADIZ on the flight in question. His argument is premised on the variance between the Administrator's evidence that the offending aircraft "landed in the vicinity of McKeown Airport, DE (IDE5) [and/or] Okolana Plantation Airport (DE33)," and respondent's testimony that he did not land at either of those places, but at Summit, "at least 20 miles away." (See the Washington, D.C. sectional chart, Exh. R-1.) He argues his testimony is "undisputed" and questions the accuracy of the radar coverage if it tracked him to the wrong airport. The Administrator counters that the testimony of respondent is indeed disputed—by the evidence and by the law judge's inherent credibility determinations, believing the Administrator's witnesses over respondent's testimony. We do not

treat lightly such credibility determinations, made with "full appreciation of all the relevant factors and other evidence in the record bearing on the appropriate weight to be given each witness's testimony and to each party's documentary [and demonstrative] submissions."<sup>9</sup> We concur with the law judge's overall assessment of the sufficiency of the evidence in this case, and we find that the evidence is, as the law judge concluded, "overwhelming." We further find it significant that respondent stated, in a quasi-admission, that:

the wind was stronger than reported, and I corrected for it to stray [sic] clear[] of the ADIZ. I did not realize I was inside the ADIZ, but I knew I was close so I corrected my flight to stay away.

Exh. A-3.

Our assessment of the evidence leads us to "defer to [the] law judge's views on credibility because they are made within the context of his exclusive province to assess demeanor on the stand. While we encourage our law judges to explain such assessments whenever possible, a failure to do so does not vitiate their choices."<sup>10</sup> The law judge clearly made an implicit credibility determination against respondent's exculpatory claim. The Administrator met his burden of proof and established by a preponderance of the reliable, probative, and substantial evidence that respondent committed the violations as alleged. We are convinced, after a careful review of the record, that the law

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<sup>9</sup> See Administrator v. Crocker, NTSB Order No. EA-4565 at 7 (1997).

<sup>10</sup> Crocker, supra at 7, n.9; Administrator v. Boardman, NTSB Order No. EA-3523 at 2, n.7 (1992); Administrator v. Klock, 6 NTSB 1530, 1531 (1989).

judge correctly found that the evidence demonstrated that respondent committed the regulatory violations alleged.

Respondent demonstrates no errors, nor do we discern any, in the law judge's decision. We find that safety in air commerce or air transportation and the public interest require us to affirm the order of suspension and the decision of the law judge.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The 60-day suspension of respondent's airman certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>11</sup>

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

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<sup>11</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).

UNITED STATES OF AMERICA  
 NATIONAL TRANSPORTATION SAFETY BOARD  
 OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of:

MARION C. BLAKEY,  
 ADMINISTRATOR,  
 Federal Aviation Administration,

Complainant,

v.

ROBERT LEE HENDERSON,

Respondent.

\* \* \* \* \*

Docket No.: SE-17990  
 JUDGE FOWLER

NTSB  
 Boardroom  
 490 L'Enfant Plaza, S.W.  
 Washington, D.C. 20594

Tuesday,  
 August 7, 2007

The above-entitled matter came on for hearing, pursuant  
 to Notice, at 10:00 a.m.

BEFORE: WILLIAM E. FOWLER, JR.,  
 Chief Administrative Law Judge

## APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: On the record. This  
has been a proceeding before the National Transportation Safety  
Board held pursuant to the provisions of the Federal Aviation Act

1 of 1958, as that Act was subsequently amended on the appeal of  
2 Robert L. Henderson from an Order of Suspension dated March 2,  
3 2007, which seeks to suspend Respondent Henderson's private pilot  
4 certificate number (omitted) for a period of 60 days. The  
5 Administrator's Order of Suspension was duly promulgated pursuant  
6 to the National Transportation Safety Board's Rules of Practice  
7 and was issued by the Regional Counsel, Central Region of the  
8 Federal Aviation Administration.

9 This matter has been heard before this United States  
10 Administrative Law Judge. And as is provided by the Board's Rules  
11 of Practice, specifically Section 821.42 of those Rules, as the  
12 Judge in this proceeding, I have the option under that Section to  
13 either subsequently issue a written decision or, as I am going to  
14 do forthwith at this time, to issue an oral initial decision,  
15 which sometimes is deemed to be a bench decision.

16 Following notice to the parties, this matter came on for  
17 trial on August 7, 2007 in Washington, D.C. The Respondent,  
18 Robert L. Henderson, was present at all times and was very ably  
19 represented by Robert G. Blackford, Esquire.

20 The Administrator in this proceeding was likewise very ably  
21 represented by Livaughn Chapman, Esquire, from the New England  
22 Region of the Federal Aviation Administration.

23 Both parties have been afforded the opportunity to offer  
24 evidence, to call, examine, and cross-examine witnesses in behalf  
25 of their respective sides of the case. In addition, the parties



1 were afforded the opportunity to make final argument in support of  
2 their respective positions.

3 I have reviewed the testimony and the documentary exhibits in  
4 this proceeding, which consists of 11 exhibits on behalf of the  
5 Administrator which have been duly admitted into the record of  
6 this hearing, plus the testimony of six witnesses that the  
7 Administrator has adduced. Respondent had one exhibit and one  
8 witness, being the Respondent himself, Respondent Henderson.

9 Now, gentlemen, there is really only one question to be  
10 decided in this proceeding, as in so many other cases that I have  
11 had the privilege of hearing. We are not confused about what the  
12 issue is here. Was there, or was there not, an incursion of the  
13 ADIZ zone on April 27, 2006 by Respondent, Robert L. Henderson?  
14 That's the question we have to decide here -- the paramount,  
15 central, and overriding issue to be decided and adjudicated.

16 The Administrator has had six witnesses, many of whom I would  
17 deem to be expert in their chosen fields of endeavor. One in  
18 particular was designated on the record as an expert in air safety  
19 as a pilot, Inspector Richard Eilinger; who is located at the  
20 Portland, Maine FSDO office and is the first witness in the  
21 Administrator's case. His testimony, as was the testimony of most  
22 of the Administrator's witnesses, was most persuasive.

23 The evidence adduced by Inspector Eilinger; by Brian Preston,  
24 who is a private pilot, who has a lot of flight data experience;  
25 by Robert James Conley, who has performed the monitoring of the

1 ADIZ function from TRACON and is well versed and experienced in  
2 that regard; Ricky Bernard Gray, working at Homeland Security is a  
3 detection system specialist, who has extensive air traffic  
4 controller and radar experience and his job every day is  
5 monitoring ADIZ airspace constantly. His primary mission, as he  
6 stated, is to identify and detect aircraft in the ADIZ, coming and  
7 going, which he did very clearly, succinctly and voluminously in  
8 his testimony, that he visually saw Respondent Henderson's  
9 aircraft, was able to get the registration number, and  
10 subsequently determined that Respondent was the owner of this  
11 aircraft, and subsequently determined that Respondent was the  
12 pilot of this aircraft at the time of the ADIZ incursion. On  
13 April 27, 2006 in mid-afternoon, about 4:00 p.m. or shortly  
14 thereafter, the aircraft had left Gaithersburg airport with  
15 assigned flight plans and proceeded. I am not going to belabor  
16 the evidence here, but the Administrator's case is simply  
17 overwhelming. There is no question that Respondent was flying  
18 this aircraft on the date and time in question, and caused the  
19 incursion.

20 So, as I stated during the course of the proceeding, I have  
21 heard a number of these cases and usually, the sanction is a 30-  
22 day period of suspension, whereas here the incursion was  
23 inadvertent by the pilot. But unfortunately, as the record amply  
24 shows and depicts, this is not the first time, it's the second  
25 time Respondent Henderson has been cited for an incursion of an

1 ADIZ. Thus, the Administrator, and rightly so, has asked for a  
2 60-day period of suspension.

3 I have stated the incursion of the ADIZ by Respondent  
4 Henderson was inadvertent, but I think Administrator's Exhibit A-3  
5 may sum up just what occurred here. But this case cannot be taken  
6 lightly. Respondent has stated he doesn't believe he invaded the  
7 ADIZ. The Administrator has such a strong case, I can readily see  
8 why this case was not settled. Respondent Henderson was very  
9 familiar with this area, as he testified. He flies two or three  
10 times a week near this ADIZ. Then he said he didn't know he was  
11 in the ADIZ. Administrator's Exhibit A-3, I think, exemplifies  
12 this very well. The last two sentences, which is the Respondent's  
13 letter to the FAA replying to the FAA's investigatory letter  
14 asking for him to state his position, in the last two sentences,  
15 Respondent Henderson says, "However, I noted the wind was stronger  
16 than reported and I corrected it to stay clear of the ADIZ. I did  
17 not realize I was inside the ADIZ, but I knew I was close, so I  
18 corrected my flight to stay away." As happened to so many pilots,  
19 and this is not the first case that I've heard where a pilot is  
20 familiar with the territory and doesn't have any idea, until later  
21 on, perhaps after maybe when he landed, that he was informed that  
22 he had caused an incursion.

23 This was not a quick, or small, or unimportant incursion.  
24 We've had testimony from several of the Administrator's experts  
25 that this incursion lasted from anywhere from three to seven to

1 possibly eight minutes on the part of the Respondent. There was  
2 many other aircraft in the ADIZ. So certainly, as counsel for the  
3 Administrator has stated during his final argument, in and of  
4 itself, being in an unauthorized entrance and incursion into the  
5 ADIZ where there are many other aircraft, the Respondent,  
6 therefore, and thereby, constitutes a hazard. Fortunately, there  
7 is nothing even approaching that, but it's a per se situation by  
8 Respondent being in the ADIZ without authorization, without an  
9 assigned transformer beacon code. He was there squawking 1200,  
10 which was a code of course for VFR conditions when you are out of  
11 the ADIZ.

12 I have to state again the Federal Aviation Administrator's  
13 case is very, very strong, topped off not only by live testimony,  
14 but by the documentary evidence, the radar plot, and then the  
15 testimony of Mr. Mark Olsen, who is in charge of and manager for  
16 Safety Services and Investigations for invasion of the ADIZ.  
17 Witness Olsen's testimony was, I would deem to be, very  
18 determinative and on point. And when you couple an expert like  
19 that with the live testimony of Mr. Ricky Gray, there is no way  
20 you could reject out of hand the Administrator's case.

21 Let me say in passing, the Respondent has made much of the  
22 fact that the Administrator's evidence as to the ultimate landing  
23 of Respondent Henderson's flight was in error. Well, be that as  
24 it may, it is my determination that it really doesn't have that  
25 much to do with the ultimate question about the incursion into the

1 ADIZ, which is what we have here.

2 I have nothing that I can be aware of that could be deemed to  
3 be mitigating where Respondent Henderson is concerned. So I would  
4 have to uphold and agree with and conclude that the Administrator  
5 was validly premised in her case as constituted by the Order of  
6 Suspension of March 2, 2007, where Respondent Henderson is  
7 concerned.

8 So then, I will now proceed to make the following  
9 specific findings of fact and conclusions of law, as set forth in  
10 the Administrator's Order of Suspension.

11 One, the Respondent admits and it is found that all  
12 times mentioned herein, the Respondent, Robert L. Henderson was  
13 and is the holder of Airman's Certificate number (omitted) with  
14 private pilot privileges.

15 Two, the Respondent admits and it is found that on or  
16 about April 27, 2006 at approximately 6:18 local time, Respondent  
17 Henderson acted as pilot-in-command of civil aircraft N9185W. A  
18 piper model PA 28-235 on a Visual Flight Rules flight in the  
19 vicinity of Reisterstown, Maryland.

20 Three, it is found that a Notice to Airmen, commonly  
21 referred to as a NOTAM number 6/2550 issued on February 28, 2006  
22 pursuant to 14 C.F.R. 99.7 and 91.139 became effective at 1700  
23 hours on March 1, 2006 and was in effect on April 27, 2006, at the  
24 time of the Respondent's noted operation.

25 Four, it is found that the NOTAM covered the Washington,

1 D.C. Air Defense Identification Zone airspace, commonly referred  
2 to as an ADIZ, in which Respondent operated his aforesaid aircraft  
3 N9185W on April 27, 2006.

4 Five, it is found that the NOTAM, among other things,  
5 contains special security instructions issued by the Administrator  
6 of the FAA. One of those instructions directed the Respondent to  
7 obtain a discreet beacon transponder code before entering into the  
8 airspace. Another instruction directed Respondent to establish  
9 two-way radio communications with air traffic control prior to and  
10 while operating within the ADIZ airspace.

11 Six, it is found that on the occasion referred to in  
12 paragraphs two through five herein, Respondent operated aircraft  
13 N9185W within the airspace described in the NOTAM. Respondent  
14 failed to squawk a discreet transponder code while operating  
15 within the ADIZ airspace or establish and maintain radio  
16 communications with air traffic control prior to and while  
17 operating within the ADIZ airspace.

18 Seven, it is found that Respondent's actions as  
19 previously described was careless, in that they potentially  
20 endangered the lives and property of others.

21 Eight, it is found that FAA records show that the  
22 Respondent, Robert L. Henderson, has a history of regulatory  
23 violations involving prior illegal operation by Respondent in an  
24 ADIZ in October 2004.

25 Nine, that by reason of the foregoing facts and

1 circumstances, Respondent violated the following sections of the  
2 Federal Aviation Regulations: a) Part 91.13(a); b) Part  
3 91.139(c); and c) Part 99.7. All of the aforesaid sections, I am  
4 incorporating by reference, as stated in the Administrator's Order  
5 of Suspension.

6 Eleven, this Judge finds that safety in air commerce, or  
7 in transportation and the public interest, does require the  
8 affirmation of the Administrator's Order of Suspension dated March  
9 2, 2007, in view of the aforesaid violations of Part 91.13(a),  
10 Part 91.139(c), and Part 99.7 of the Federal Aviation Regulations.

11 ORDER

12 It is ordered, adjudged, and decreed that the  
13 Administrator's Order of Suspension dated March 2, 2007 be, and  
14 the same is hereby, affirmed. This Order is issued by William E.  
15 Fowler, Junior, a United States Administrative Law Judge.

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18 EDITED & DATED ON  
19 AUGUST 28, 2007

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William E. Fowler, Jr.  
Chief Judge